

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE EASTERN DISTRICT OF TENNESSEE  
                  AT KNOXVILLE, TENNESSEE

3                   \_\_\_\_\_) )  
4                   SNMP RESEARCH, INC. and SNMP )  
                  RESEARCH INTERNATIONAL, INC., )

5                               Plaintiffs, )

6                   vs. )

Case No. 3:20-cv-451

7                   BROADCOM, INC., BROCADE )  
8                   COMMUNICATIONS SYSTEMS, LLC, )  
                  and EXTREME NETWORKS, )

9                               Defendants. )  
10                   \_\_\_\_\_)

11                   **TELEPHONIC ELECTRONICALLY-RECORDED MOTION PROCEEDINGS**  
12                   **BEFORE THE HONORABLE DEBRA C. POPLIN**

13                               **Wednesday, May 11, 2022**  
14                               **2:00 p.m. to 2:40 p.m.**

15                   **APPEARANCES:**

16                               **ON BEHALF OF THE PLAINTIFF:**

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**APPEARANCES:** (Continued)

**ON BEHALF OF THE DEFENDANTS:**

JOHN NEUKOM, ESQ.  
DEBEVOISE & PLIMPTON, LLP  
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San Francisco, CA 94108  
and  
LESLIE A. DEMERS, ESQ.  
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Defendant: Extreme Networks, Inc.

\* \* \* \* \*

1 (Beginning of audio recording.)

2 THE COURT: Please go ahead and state the  
3 basis.

4 MR. WOOD: Okay. So, Your Honor, we have two  
5 issues which you saw in our letter. One is: Extreme  
6 did not provide computers compliant with the protective  
7 order for source code review and they haven't provided  
8 manifests.

9 I do -- we think we have a solution to the  
10 source code computer issue, but we do still need the  
11 Court's help on setting a date for that solution.  
12 And --

13 THE COURT: What was the proposed solution for  
14 that? I saw that plaintiffs had recommended a  
15 particular computer and Extreme had responded that it  
16 would need some time because it's custom built. Is  
17 that -- is that the proposal?

18 MR. WOOD: So, I believe Extreme has ordered a  
19 different -- Extreme informed us yesterday that they  
20 ordered a computer that will be here this week which  
21 will have the required amount of ram and two -- each  
22 computer will have two eight-terabyte hard drives, which  
23 should be plenty of space for what we need to do.

24 THE COURT: Okay.

25 MR. WOOD: And they also represented to us that

1 it would take about a week, they thought, to load the  
2 tools and source code onto those computers.

3 And so we -- which the end of -- if we went to  
4 the next Monday, that would put us at May 23rd.

5 THE COURT: Okay.

6 MR. WOOD: And so we've asked the defendants to  
7 commit to May 21st because that's over a month after the  
8 original deadline of when those computers should have  
9 been available.

10 THE COURT: Right. So, can I just pause for a  
11 moment and ask Mr. Neukom what the problem would be with  
12 May 23rd?

13 MR. NEUKOM: Good afternoon, Your Honor. For  
14 today's hearing, I've asked my colleague, Leslie Demers,  
15 to take the lead. She is a talented associate at  
16 Skadden, Arps, and I was hoping she could get some  
17 podium time.

18 THE COURT: Okay. And there will be some back  
19 and forth because I want to ask questions. I have a  
20 3:00 o'clock hearing, so I need to try to, you know, get  
21 this wrapped up as soon as possible.

22 So, Ms. Demers, what would be the issue with  
23 May 23rd?

24 MS. DEMERS: Yes. Thank you, Your Honor. And  
25 I'll just directly respond to that question that you

1 raised.

2           So the issue for us is that we're in a  
3 situation that is outside of our control. You know,  
4 we've provided computers to SNMP Research on -- that  
5 they're able to use, they're able to generate, you know,  
6 700 files in two days of review, and yet they asked for  
7 custom-built computers.

8           They identified in recent days a company that  
9 they said would provide these custom-built computers,  
10 and so we've placed that order on their representation  
11 that they can moot the issue.

12           We then heard last night they want us to commit  
13 to the May 23rd deadline. Our concern with committing  
14 to that deadline -- there is a couple of issues with  
15 that, Your Honor. Number one is: We're having to take  
16 it on face. This vendor that SNMP Research had  
17 identified, this quote that the vendor had provided of  
18 hoping to have the computers available to us by the end  
19 of this -- by the end of this week, by Friday, this is a  
20 third party. We're not actually building these  
21 computers ourselves, someone else is. So we're just  
22 having to take it on face.

23           The second issue is --

24           THE COURT: Let me -- let me stop you right  
25 there because I want to set this out for the parties'

1 consideration. What if you, when you receive the  
2 computers, you immediately notify the plaintiffs that  
3 they have been received. And then if you have -- I  
4 guess you've estimated a week to upload the tools and  
5 source codes. Then it's a week from that date. And  
6 hopefully it will be within, you know, days of the  
7 anticipated date.

8           They have given us this Friday, but  
9 understanding this is a third party and there are  
10 certain delays outside of everyone's control, I guess  
11 I'm asking Mr. Wood: Would there be any problem with  
12 that? I mean, I can understand some -- the issue with  
13 committing to a particular date if they don't receive  
14 the computers on Friday.

15           MR. WOOD: Your Honor, we don't have a problem  
16 with that proposal. We aren't the ones who ordered the  
17 computers. So we assume they're going to show up on  
18 Friday.

19           I'll also add: We -- when we found out from  
20 defendants -- they said they couldn't get a computer in  
21 time. We also ordered computers, and we have those  
22 computers. They're brand-new computers with brand-new  
23 hard drives. They're ready to go. And we've offered to  
24 ship those to defendants, and they have turned down our  
25 offer and said they want to purchase their own.

1           So, yes, I would say if they do not get the  
2 computers, they would then have to take us up on our  
3 offer to use our computers. They're brand new. And I  
4 can show when we ordered them. And they can -- they  
5 have plenty of space. They have the required amount of  
6 ram.

7           So we have multiple solutions here. There is,  
8 I don't think, a reason to continue to delay  
9 indefinitely.

10           THE COURT: And we're not going to delay  
11 indefinitely, but we're sitting here today and the  
12 request is being made for the laptops that were called  
13 for in the protective order. For multiple reasons, that  
14 was not done. So I want to address the issue as we sit  
15 here today and move you all forward.

16           So, my first proposal is: Instead of requiring  
17 them to commit exactly to the 23rd, because they're not  
18 sure exactly when they will receive them, there is --  
19 hopefully they will receive them this Friday, but I  
20 would propose for Ms. Demers to notify the parties  
21 immediately upon receipt, and then there be a week from  
22 that date for them to load the tools and the source  
23 code.

24           If, say -- we're looking about the -- that will  
25 be the 13th is when they are anticipated. If we get to

1 the 17th and they're still not received, then we'll need  
2 to take up the issue of, you know, why that -- why they  
3 haven't been delivered and we can look at other  
4 alternatives.

5 But they have -- I don't -- I don't see the  
6 point in insisting that they use computers you've bought  
7 when they have already placed the order and they're  
8 expected this Friday. We're dealing with some things  
9 that are just uncertain.

10 The order has been made; correct, Ms. Demers?

11 MS. DEMERS: Yes, that's correct.

12 THE COURT: With an anticipated date of this  
13 Friday the 13th; is that correct?

14 MS. DEMERS: That's also correct, Your Honor.

15 THE COURT: All right. So I propose that we  
16 see if -- can you track the delivery?

17 MS. DEMERS: We'll be picking them up in  
18 person. So it's not going to be an actual shipment.

19 But the time period between now and Friday,  
20 they're actually building -- you know, it's a custom  
21 computer. So they're having to put it together and get  
22 the parts, etcetera.

23 THE COURT: Will they be finished Friday for  
24 pickup?

25 MS. DEMERS: Yes, that was the -- I apologize,



1 Your Honor. That was the information provided to us.

2 THE COURT: Okay. So you'll pick them up on  
3 Friday and then start loading the tools and source codes  
4 on the 16th?

5 MS. DEMERS: Yes. We're hoping to be able to  
6 start loading on the 13th, but that will depend on the  
7 actual time that we pick it up. But, yeah, that general  
8 timing is correct.

9 THE COURT: And you do estimate one week. So  
10 if all goes as planned, would it be ready by Monday the  
11 23rd?

12 MS. DEMERS: If all goes as planned, the answer  
13 is, yes, Your Honor. We're dealing with a third party.  
14 We're also dealing with a large amount of code. Our  
15 best guess is that it will be able to be loaded within a  
16 week, but we will certainly be willing to immediately  
17 notify counsel for the plaintiffs if that estimate is  
18 inaccurate.

19 THE COURT: Okay. So, Mr. Wood, if things go  
20 as planned and the source code and tools are all loaded  
21 and ready to go hopefully around the 23rd, when would  
22 you be planning to make the trip? Can you schedule it  
23 for around the 25th so that gives us two buffer days?

24 MR. WOOD: Yes, we can do that, Your Honor.

25 THE COURT: Ms. Demers, does that sound

1 acceptable if everything goes as planned? Hopefully  
2 you'll be ready by the 23rd, and then it would be ready  
3 for plaintiffs by the 25th.

4 MS. DEMERS: Yes, Your Honor. Thank you.

5 THE COURT: All right. And, Ms. Demers, I ask  
6 that if on the 13th, since you are planning to  
7 personally pick up the computers, if there is some issue  
8 and they're not ready, you immediately notify plaintiffs  
9 and also not only explain why they weren't ready, but  
10 the anticipated date of when they will be, and hopefully  
11 that would be no later than Monday if there is some  
12 issue. If it goes beyond the seven -- goes into the  
13 17th, I will want you to contact chambers on the 17th  
14 because I will want to have further discussion as to  
15 what is causing the delay.

16 MS. DEMERS: Absolutely, Your Honor.

17 THE COURT: All right. So, as of now, the  
18 source code review will occur on Wednesday the 25th.  
19 Does that take care of the source code review for -- in  
20 dealing with the computers and the exact date for now?  
21 Do we need to discuss that before we move to the  
22 manifests?

23 MR. WOOD: I think that -- that resolves the  
24 issue for plaintiffs, Your Honor.

25 THE COURT: All right.

1 MR. WOOD: Thank you.

2 THE COURT: On the manifests, after reviewing  
3 the letters, my question is: Is there not something  
4 that can generate this information? Even if it is not  
5 kept in that -- it's just not kept is what I hear  
6 Extreme saying in the normal course of business. Why  
7 can that not be -- why cannot a generator be used for  
8 that?

9 MS. DEMERS: Yes. Thank you, Your Honor.

10 So we had detailed our position on this in the  
11 attached declaration as well from an engineer at  
12 Extreme, but we hope that everyone, including  
13 plaintiffs, appreciate that this is not counsels'  
14 estimate. This is information from the engineers at  
15 Extreme who are handling this data and work with the  
16 technology.

17 So, our understanding, Your Honor -- you're  
18 correct; our client does not keep these documents in the  
19 ordinary course of business.

20 In terms of generating the documents, that can  
21 be done. It would require the generation of  
22 approximately 75 million files, and according to our  
23 engineers, it will take -- it will take months. It will  
24 take multiple months to complete.

25 MR. WOOD: Your Honor, can I respond?

1           THE COURT: Yes, because I want to fully  
2 understand. I mean, I -- it is my impression that a  
3 generator tool could be used on these particular  
4 computers that are being set up for the source code and  
5 that it could automatically generate the files. So if  
6 that's -- I need some clarification if that is not  
7 correct.

8           MR. WOOD: Yeah, that -- that is correct, Your  
9 Honor, and it's really not -- it's not generating a  
10 file, it's just generating a number.

11          THE COURT: Right.

12          MR. WOOD: It's a unique number for that file.

13          THE COURT: Right.

14          MR. WOOD: And Extreme has actually done this  
15 with the discovery they provided to us. So they have  
16 given us one file of metadata for their discovery. So  
17 every time they give us a set of discovery, they give us  
18 a list of the files and the MD5 checksum for every file  
19 in their discovery.

20          Brocade -- so they're not generating additional  
21 files. It's just -- it's just an identifier for the  
22 file they're generating.

23          THE COURT: Right. I -- if I could ask  
24 Ms. Demers. That's what I found confusing about the  
25 engineer's statement because it doesn't -- the way I

1 understand it, it wouldn't be something he's creating.  
2 This is already something that -- it just has to be  
3 generated from the file. It's not creating something  
4 new. So --

5 MS. DEMERS: Yes, Your Honor. And I hope I'm  
6 not doing the engineers a disservice, you know, in  
7 repeating what they had explained to me, but at least  
8 based on their explanation to me of having to create  
9 these MD5 cache checks and values for the source code  
10 files, I understand that it actually -- you know, it  
11 would create -- it would require them to create  
12 something new and that that process would take a  
13 long -- a very long period of time.

14 I'm not sure entirely what's driving the amount  
15 of time that it takes to generate this information, but  
16 I would expect it to be the fact that the source code  
17 files and the source code hairballs, as they call them,  
18 have so many files that they contain with 300 files with  
19 each release. And, again, that's totaling to about 75  
20 million files. So --

21 MR. WOOD: And, Your Honor --

22 THE COURT: Yes.

23 MR. WOOD: Yeah. I just might help. So we  
24 have also initiated a source code review with Brocade.

25 THE COURT: Yes.

1 MR. WOOD: They have -- and I don't know if you  
2 remember, but Brocade is a party who provided the code  
3 to Extreme and there is a similar code base there.  
4 Brocade has 199 source code releases, which they were  
5 provided to us on April 22nd. They also provided one  
6 file per release that had a list of every file name in  
7 the release and the MD5 checksum for that file. They  
8 didn't have to -- they didn't create a separate file for  
9 every single source code file. They put it all in one  
10 file.

11 And we did the same thing and delivered those  
12 mani- -- for our source code and delivered those  
13 manifests to Extreme and Brocade. So -- and, as I said,  
14 all the parties have been doing this for regular  
15 discovery; e-mails and documents and other things. It's  
16 just -- it's simply not -- it's a generated number, as  
17 you said. It's not a separate file that has to be  
18 created.

19 MR. NEUKOM: Your Honor --

20 THE COURT: I'm sorry.

21 MR. NEUKOM: I'm so sorry for the interruption.  
22 This is Jay Neukom. I -- may I try to assist very  
23 briefly?

24 THE COURT: Yes.

25 MR. NEUKOM: Okay. So I think -- look, I am

1 also not an engineer, but, God help me, I litigate a lot  
2 of these cases.

3 Here is my understanding: It's absolutely true  
4 that for most files, it's really easy to generate an MD5  
5 hash value. Every e-mail has an MD5 hash value, a Word  
6 document does, a PDF does, and there are absolutely  
7 products and services available on the market that can  
8 scan and generate an MD5 hash value for various sorts  
9 and files. That's not the issue here; right?

10 So, let's say, just hypothetically, we had  
11 produced a bunch of documents to them, you know,  
12 e-mails, spreadsheets, what have you, and they wanted an  
13 MD5 hash value. In that case, we really wouldn't have a  
14 timing or a burdened issue to bring to you. It might  
15 be, at most, what I would call a hassle issue that we  
16 would have to run the software.

17 The issue here, as I understand it from  
18 Extreme's engineers, is: We're not talking about a Word  
19 file or a PDF file; we're talking about a massive,  
20 massive directory structure of files. And Your Honor's  
21 heard us talk about the size of these files; right? But  
22 across the 250-some-odd source code master files, we're  
23 talking about 12 terabytes of data.

24 Our understanding from the Extreme engineers is  
25 that: Number one, they have not created in the past MD5

1 hash values for these files. So they don't have them  
2 today. And, number two, if they were asked to move as  
3 quickly as possible, whether it's for the use of an  
4 outside service or writing their own custom script, to  
5 then generate an MD5 hash value for these kinds of files  
6 with their volume and numerosity, that's the issue.

7 And I just wanted to make sure that the Court  
8 did not hear Ms. Demers and I to be saying that MD5 hash  
9 values are always a pain in the rear end. That would be  
10 wrong, and a simple Google search would indicate that.  
11 The issue we're having is because of the nature of these  
12 massive directory file structures, they're not prone to  
13 that easy MD5 hash value.

14 And then finally, I will just add, and then I  
15 will put the cotton back in my mouth rather than in my  
16 ears, if there is, you know, any awareness of a way to  
17 generate these MD5 hash values quickly with any  
18 specificity, we've not heard it from the plaintiffs.  
19 What Ms. Demers and I have been hearing is on one hand  
20 Mr. Wood saying, "We want these MD5 hash values,  
21 generate them quickly and that should be doable  
22 quickly," and on the other hand, these overworked  
23 engineers who, I think the discussion was work through  
24 the night telling us that's not doable without an  
25 obscene amount of work.



1           And I thank you for allowing me to interrupt.  
2           I'll give the podium back to Ms. Demers.

3           THE COURT: Well, for either of you, Mr. Neukom  
4           or Ms. Demers, what I also want to point out is that I'm  
5           hearing that Broadcom has produced these and its source  
6           code as well, and it sounds like you're telling me you  
7           can't do it because their source code files -- or that  
8           there is going to have to be more effort put into it.  
9           But Broadcom has already produced it, so that's what I  
10          don't understand. And --

11          MR. NEUKOM: My best --

12          THE COURT: And you agreed to provide it. You  
13          signed the Agreed Protective Order and you agreed to  
14          provide it.

15          MR. NEUKOM: So two thoughts there. Look, it's  
16          hard for me to speak for Broadcom and Brocade because I  
17          don't represent them, but I do know that some companies  
18          do create and maintain MD5 hash values in the ordinary  
19          course of business for their source code directory. So  
20          some do and some don't. I have not spoken with  
21          Ms. Plessman about this. I'd have to think that her  
22          client already has that data.

23          Number two, as to the protective order issue, I  
24          think that's a very fair point. My answer to that is  
25          entirely genuine, which is: When we signed that

1 protective order, we had not -- as I don't think anybody  
2 had -- begun the process of diving into this ocean of  
3 source code. And whatever any court order calls for, if  
4 we have it, we will produce it.

5 And in this particular instance, because of how  
6 our client currently manages its source code repository,  
7 we simply don't have it. So we are then interpreting  
8 that as, you know, what you have, you have to give to  
9 honor the order, but -- but we just literally don't have  
10 this.

11 And then, you know, finally, look, if the end  
12 of this discussion is that the Court wants us to go  
13 generate MD5 hash values, we will respectfully disagree  
14 with that, but, of course, honor that.

15 But I do want to be clear that every indication  
16 that Ms. Demers and I have, other than e-mails from  
17 Mr. Wood saying in a specific fashion that this can be  
18 done quickly, is that this will be a multi- --  
19 multi-month process.

20 If we lose this fight, if we're forced to go  
21 create new evidence, I would ask for some understanding  
22 from the Court on the timing because I don't think that  
23 the Court has a full record before it about the  
24 technical complexity and the resources, human and  
25 computing, that would be required to do that.

1 MR. WOOD: Your Honor, this is John Wood.

2 THE COURT: So, Mr. Wood, let me ask you this  
3 question: I know it's provided in the protective order,  
4 but what does this add to the case to have this  
5 information?

6 MR. WOOD: Well, Your Honor, two things,  
7 mainly. One, it's standardly done because it shows the  
8 accuracy and the integrity of the files. So we avoid  
9 any type of disagreement or fights that that's not the  
10 file we produced to you; you're -- you changed the file.  
11 All of that. So that's why everything we're producing  
12 has an MD5 associated with it.

13 The other thing it does for us is: It allows  
14 us to easily find duplicates. So they've -- they're  
15 producing about 250 source code releases, and a lot of  
16 the code is the same, and if the MD5 checksum is the  
17 same between the releases, we don't even need to look at  
18 it. We know that file is exactly the same because the  
19 MD5 checksum is the same. So there are some pretty good  
20 reasons --

21 THE COURT: Right.

22 MR. WOOD: -- for putting it in the protective  
23 order.

24 And I would offer that -- I think it's  
25 extremely unlikely that Brocade had these MD5 checksums

1 sitting around. I know SNMP Research did not and they  
2 generated all of them, and it was not that difficult.  
3 And my understanding would be that Brocade did, too.  
4 And what I heard from Mr. Neukom, he has no knowledge  
5 otherwise.

6 And I -- you know, I think one reason it's so  
7 hard for them is because they think they have to  
8 generate a new file for every MD5 checksum. Well, if  
9 you do that, it's going to take a long time, but the  
10 only reason you do that is to make it more difficult.

11 You should be putting the file name and the MD5  
12 checksum all -- just writing it out to a file. You're  
13 not creating 75 million new files. So if you do it as  
14 their engineer proposed to do it, it's -- it probably  
15 will take longer and will be harder. But that's not the  
16 way anyone does it and that's not the way Extreme has  
17 done it for other parts of this case.

18 THE COURT: Okay. Let me suggest this because  
19 there are certainly good reasons to have this and it is  
20 called for in the protective order: So I would ask that  
21 you all have some further discussion and have  
22 Ms. Plessman on the line as well so there can be an  
23 understanding of what -- how -- maybe that would help  
24 and an explanation of how they did it, and that you all  
25 can decide what would be the best way to produce this

1 information in the most expedient fashion and that that  
2 will be in compliance with the protective order to give  
3 you the assurance of the information you need to check  
4 the files. And I'm going to ask that you do that before  
5 Tuesday. And so if there are any issues with the  
6 computers, we can address that on Tuesday. And if you  
7 have not been able to resolve how to produce this MD5  
8 hash information, I'll take that back up on Tuesday  
9 afternoon.

10 It sounds like you all need to talk some more,  
11 and I'm not going to be doing anything more and holding  
12 you here longer than just listening. And I really feel  
13 like you all need to be talking to each other so that  
14 you're on the same page as to what the expectations are.

15 So, Mr. Neukom and Ms. Demers, you will need to  
16 supply this information, but I want to give you the  
17 opportunity to have further discussions with Broadcom so  
18 you can find out how they were able to produce it to the  
19 satisfaction and compliance with the order and further  
20 conversations with plaintiffs so that you are all on the  
21 same page. And if need be, I'll schedule a time to talk  
22 with you again on Tuesday.

23 MS. DEMERS: Thank you, Your Honor.

24 THE COURT: Let me go ahead and -- I'm just  
25 going to block time in the event we need to take this

1 back up.

2 So I would be able to talk with you all at  
3 4:30. Is there -- do any of you have a conflict with  
4 that time should we need to gather?

5 MR. WOOD: No, no conflicts for us, Your  
6 Honor --

7 THE COURT: Right.

8 MR. WOOD: -- for plaintiffs.

9 THE COURT: Ms. Demers?

10 MS. DEMERS: No conflicts for me, Your Honor.

11 THE COURT: All right. So I will go ahead and  
12 put a hold on the calendar for 4:30 on Tuesday the 17th,  
13 and if you're able to resolve everything, just notify  
14 Ms. Nease that that can be taken off the calendar by  
15 Tuesday morning, if you don't mind.

16 All right. I think that addresses the two  
17 issues. Is there anything else we need to take up?

18 MR. NEUKOM: This is Jay Neukom, Your Honor.  
19 One -- one small note, which is -- if you'll go with  
20 me -- related to what we talked about today, and the  
21 Court may be happy to know it's not a point of  
22 contention.

23 From Extreme's perspective, we would  
24 respectfully ask the Court to order the parties to  
25 attend a paid third-party mediation, or at least we'd

1     like the Court to have that -- to be thinking about it  
2     in the back of the Court's mind.

3             From our perspective, you've heard me at the  
4     podium say that we're sort of -- we're the smallest  
5     party here and we feel a little bit like the little  
6     sibling in the backseat being taken for a ride.

7             The -- without divulging protective  
8     order-governed materials, we've now seen some but not  
9     all of the plaintiffs' life history for this code, and  
10    we have an understanding of what the market value is of  
11    a license to this stuff. And I'm not trying to persuade  
12    you that I'm right on that, but I can tell you that the  
13    amount of fees and burden that Extreme Networks, as the  
14    company that unknowingly bought this software from  
15    Broadcom and Brocade, if it allegedly has SNMP code in  
16    it, the amount of resources and money that we've been  
17    putting into this just to comply with the source code  
18    issue is already dwarfing what appears to us, to  
19    Ms. Demers and I, to be the market value of a license  
20    for this stuff.

21            So, again, I'm not trying to convince you that  
22    this case is worth a lot or a little, but from our  
23    perspective, I don't think -- the Court may have  
24    inferred how well or not counsel is communicating based  
25    on the last few hearings.

1           So I would ask the Court to use its inherent  
2 authority to force at least Extreme and SNMP to hire and  
3 use a respected, paid third-party mediator to force  
4 these folks to get into a room for 12 hours and to not  
5 leave until they have signed a deal or at least  
6 exhausted all possibility.

7           And I don't know if this is a motion or a case  
8 management, but I just wanted the Court to be aware of  
9 that for the benefit of its case management.

10          THE COURT: Well, as a magistrate judge, I  
11 handle the pretrial case management. Any order to  
12 mediation would be up to, again, the district judge.  
13 I'm happy to relay your point to that.

14          I would ask, Mr. Wood, what your response would  
15 be to that.

16          MR. WOOD: Well, Your Honor, Mr. Neukom has  
17 blind-sided us with this. So he didn't bring it up  
18 beforehand. So we have not had an opportunity to talk  
19 amongst ourselves.

20          THE COURT: Well, perhaps you can include that,  
21 think about it and include that in your discussions you  
22 need to have before Tuesday.

23          MR. WOOD: Right. I will offer this  
24 observation, though: His conclusion on the value of the  
25 case seems to preclude any successful mediation. He



1 thinks if the case isn't worth anything, we're not going  
2 to be able to mediate successfully, and that's the  
3 problem we've had, I think, since the beginning.

4 And they -- they didn't receive the source code  
5 unknowingly. They knew. They asked for it. They asked  
6 for permission. They didn't get it. They took it  
7 anyway and they began to use it.

8 So there is multiple misrepresentations in what  
9 Mr. Neukom was saying, which I don't -- we'll have to  
10 talk about it, and we'll be glad to talk about it.

11 THE COURT: Well, I'm sure we will all be  
12 meeting again.

13 MR. WOOD: Yes.

14 THE COURT: We hope you can get these issues  
15 worked out, but, if not, I'll talk to you again on  
16 Tuesday.

17 But since Mr. Neukom has put that on the table,  
18 if you would just see if you can have some discussion on  
19 that, and if there is a desire to go that route, that  
20 information can then be passed along for the district  
21 judge's consideration.

22 MR. ASHLEY: Your Honor, this is Matt Ashley.  
23 That makes sense.

24 I wanted to mention one thing that I think is  
25 in your wheelhouse, and you may have already seen it

1     come across the line, but the parties have agreed on one  
2     thing, and they have made a joint motion to extend a few  
3     discovery deadlines under --

4             THE COURT:   I did --

5             MR. ASHLEY:   -- the scheduling order.

6             THE COURT:   I did see that joint motion, yes.

7             MR. ASHLEY:   Yeah.   So we finally reached an  
8     agreement on something.   And I don't know whether -- you  
9     know, we're trying to do what we can as the plaintiff to  
10    keep the trial date, but, you know, to get ahead of some  
11    of these issues because of the delays.   So, this is, you  
12    know, our first attempt at trying to do that, to address  
13    these delays.   And so we've asked to move the expert  
14    disclosure deadlines out about 30 days each, and that,  
15    you know, necessitates the change to the final witness  
16    list deadline and the close of discovery.

17            For all this, we're talking about a few weeks  
18    to a month.   It doesn't change any of the other dates,  
19    like the deadline for dispositive motions or Daubert or  
20    trial or pretrial conference or pretrial filing dates.

21            So I just wanted to supply it for you.   It  
22    would help our planning purposes.   If it's something  
23    you're going to rule on, you know, to have an answer  
24    sooner rather than later, but I realize it was just  
25    filed this week.   I just wanted to supply it for you.

1           THE COURT: Yes, I also noted that in  
2 preparation for this all, and as long as it's not  
3 affecting the dispositive motion deadline, it should be  
4 fine. But I will be ruling on that rather quickly.

5           MR. ASHLEY: Thank you, Your Honor.

6           THE COURT: All right. Thank you. You all  
7 have a nice afternoon.

8           MR. WOOD: Thank you. You as well.

9           MR. NEUKOM: Thank you, Your Honor.

10          (Which were all the digitally-recorded  
11 telephonic proceedings had and  
12 herein transcribed.)

13                   \* \* \* \* \*

1 C-E-R-T-I-F-I-C-A-T-E

2 STATE OF TENNESSEE

3 COUNTY OF KNOX

4 I, Teresa S. Grandchamp, RMR, CRR, do hereby  
5 certify that I reported the digitally-recorded audio  
6 proceedings to machine shorthand to the best of my  
7 ability and hearing; that the foregoing pages were  
8 transcribed under my personal supervision and constitute  
9 a true and accurate record of the digitally-recorded  
10 audio proceedings.

11 I further certify that I am not an attorney or  
12 counsel of any of the parties, nor an employee or  
13 relative of any attorney or counsel connected with the  
14 action, nor financially interested in the action.

15 Transcript completed and signed on Wednesday,  
16 May 25, 2022.

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TERESA S. GRANDCHAMP, RMR, CRR  
Official Court Reporter